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UNITED STATES PATENT & TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL
PROPERTY AND DIRECTOR OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE
Washington, D.C. 20231

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Paper No. 15

In re Application of
Brian Mattson
Application No. 09/560,067
Filed: April 27, 2000
Attorney Docket No.: MAT-P-99-002
For: A SYSTEM AND METHOD FOR
PROVIDING REAL-TIME RESTAURANT:
REVIEWS

PETITION TO WITHDRAW
DRAWING REQUIREMENT
and
DEFECTIVE BRIEF
REQUIREMENT
37 C.F.R. 1.181

This is in response to applicant's Petition filed on April 15, 2002, to have the requirement for drawing changes in the May 30, 2001 Final Office action withdrawn and to have the Notice of Non-Compliant Brief dated March 3, 2002 likewise withdrawn with the case forwarded to the examiner for consideration of the Appeal Brief filed December 26, 2001. Since there is no fee for this petition the \$130.00 petition fee will be refunded to Deposit Account No. 50-0595.

The petition is **GRANTED IN PART** with respect to certain of the claimed features being adequately illustrated in the drawings while other claimed features are in fact not adequately illustrated as set forth in the May 30, 2001 Office action. With respect to the Appeal Brief filed December 26, 2001 the arguments therein are considered to fully support how the claims do not stand or fall together. However, the Appeal Brief is considered to be defective since it does not indicate under the section "Status of Claims" which claims are on Appeal and the issue of the drawing corrections must be resolved before the case is in condition for Appeal.

The petitioner urges that the current drawings in the application are sufficient to meet the requirements of 37 CFR 1.83(a). Specifically, features such as a computer which is commonly known to store, receive and access information has been illustrated as a labeled rectangular box in figure 2. Further, since the information is intangible, the storing and retrieving of information can't be illustrated but is fully disclosed in the drawings. Petitioner argues that a website is also intangible and as such has been illustrated in figure 2 as a rectangular box representing a network such as a network providing access to a website. The terms "input means" and "processing unit" are found in figure 2 which may be used to post information on the website. Finally "the portable display means" in figure 2 is used to represent any portable display means for sending, receiving or accessing information such as a cellular telephone or a personal digital assistant. With respect to the issues directed to the Appeal Brief being Non-compliant, petitioner urges that the Appeal brief clearly identifies the status of all of the claims and that each of the groups of claims have been argued separately.

A review of the file history indicates that in the Office action dated October 30, 2001 the examiner objected to the drawings for failing to show the following claimed features: the receiving and storing of the information, the website, the posting of the information on the website, accessing the information via a computer, the computer, the destination remote from the restaurant, the wireless device, the cellular telephone, and the personal digital assistant.

As set forth by the petitioner most of these features are in fact adequately illustrated in the drawings with the exception of the "cellular phone". Clearly what is illustrated in figure 1 is representative of the "personal digital assistant" but claim 23 specifically claims a "cellular phone" and such has not been illustrated.

Accordingly, the petition to withdraw the objection to the drawings is granted as directed to all of the features with the exception of the cellular phone. Since this feature is claimed it must also be illustrated.

A review of the file history as directed to the Appeal Brief failing to comply with the requirements of 37 CFR 1.192(c) indicates that in the Office communication dated March 6, 2002 the examiner indicated that the Appeal Brief was defective for failing to identify the status of all claims, pending or cancelled, or does not identify the appealed claims, that the Brief fails to provide any arguments in support of the different groups of claims being treated separately, and that the application still contains issues which are not appealable, namely the drawing objections discussed above.

The Appeal Brief filed on December 12, 2001 is considered to adequately argue the separately grouped claims but fails to identify the status of all claims, specifically the brief does not identify the status of claims 9-14 and 21-29. It is unclear whether these claims are rejected, objected to or allowed. Further, the drawing issues discussed above must be resolved before the application is ready for Appeal.

Accordingly the petition on the Appeal Brief is granted to the degree that the Appeal Brief filed on December 12, 2001 is considered to adequately define the separately grouped claims. However, the Appeal brief is still considered to be non-compliant since the status of all of the claims has not been identified and that the appeal is premature since all of the non-appealable issues have not been resolved, specifically the drawing corrections.

Petition is granted as to the issues identified above. However, petitioner must make the corrections to the drawings to illustrate the use of a cellular phone or delete this from the claims in order to prepare the application for Appeal and the Appeal Brief must be corrected to indicate the status of all pending claims. Petitioner is given one (1) month shortened statutory period in which to make the identified changes at which time the application will be forwarded to the examiner for consideration of the Appeal Brief.

Summary: *Petition Granted In Part*



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